

IN THE COURT OF APPEAL
[On Appeal From The High Court]

CRIMINAL APPEAL NO: AAU0001 OF 2012
(High Court Case No: HAC128 of 2009S)

BETWEEN : **MONIKA ARORA**

Appellant

AND : **THE STATE**

Respondent

Coram : **Goundar JA**

Counsel : **Mr. V. Vosarogo for the Appellant**
Mr. V. Perera for the State

Date of Hearing : **21 May 2014**

Date of Ruling : **2 June 2014**

RULING

- [1] This is an application for leave to appeal against conviction and sentence pursuant to section 21(1) of the Court of Appeal Act. The appellant was tried in the High Court at Suva on one count each of money laundering and corrupt practices.
- [2] After the trial judge had delivered his summing-up, the assessors unanimously expressed opinions that the appellant was not guilty on both counts. The trial judge did not agree with the not guilty opinions of the assessors and in a judgment delivered on 14 December 2011 convicted the appellant and sentenced her to a total sentence of 7 years' imprisonment with a non-parole period of 6 years.
- [3] After a change of counsel on appeal, the new counsel filed the following amended grounds:

“5.1 THAT the learned trial judge erred in law and fact in not accepting the unanimous ‘not guilty’ opinions of the assessors that the Appellant was

not guilty of both counts on the Information and such non-acceptance, and/or failure to give proper weight and/or consideration to the Assessors opinions as judges of facts rendered the judgment demonstrably perverse and/or unsafe or unsatisfactory.

- 5.2 THAT whilst the learned trial judge provided reasons for differing from the majority opinion of the assessors such reasons provided by the learned trial judge was inadequate and failed to provide cogent justification which can withhold critical examination in light of the whole of the evidence presented at trial.
- 5.3 THAT the learned trial judge at paragraph 9 of the judgment gave undue weight and regard to circumstantial evidence of PW15, PW16, PW17, PW18, PW19, PW20, PW21, PW22, PW23 and considering their evidence as the most important finding in the case when such evidence does not even satisfy any of the element of the offence of money laundering.
- 5.4 FURTHER to the above, the learned trial judge at paragraph 9 of the judgment failed to properly provide reasons why it is accepting the list of invoices, payment vouchers and Vinod Patel cheques and what weight the court gives such documents without any proper evidentiary analysis that it was in any way connected with the role, job description and or duty of the Appellant.
- 5.5 THAT the learned trial judge misdirected and did not give adequate directions to the assessors on the documents presented at trial such as the invoices, payment vouchers and cheques and how they were related or connected with the Appellant in the document generation, verification, signing and or countersigning which process was vital to the outcome of the cheque disbursement from ANZ Bank.
- 5.6 THAT in all the circumstances of the case, there has been a miscarriage of justice by reason of the failure of the State to prove the role of the Appellant in the invoices, payment vouchers and cheques generation without any independent expert evidence that would suggest the culpability of the Appellant.
- 5.7 THAT the learned trial judge failed to properly direct the assessors that the absence of any evidence of Umakant Patel to rebut the evidence of the Appellant that monies were given to him after it was withdrawn created a doubt in the prosecution case and gave credence to the wrong evidence of the Appellant and such evidence is consistent with the defence shown by the Appellant.

- 5.8 THAT the learned trial judge's summing up did not adequately address the evidence in its totality in favour of the Appellant and the Court's own discourse of the financial abilities of the Appellant to meet new responsibilities were tangential matters which have been overly inculcated to be part of the strands of evidence in an otherwise, weak prosecution case.
- 5.9 THAT the learned trial judge was wrong in law and fact to entertain the view that the Appellant was guilty and was involved in the dubious creation of the invoices, payment vouchers and cheques falsely and that she was aware that the encashed cheques were proceeds of crime when no such evidence was presented at trial of the criminality of cashing cheques under orders of her superiors.
- 5.10 THAT in all the circumstances of the case, the learned judge failed in the following:
- (a) To hold the Prosecution case to proof on all the elements of the offence of Money Laundering and Corrupt Practices; and
 - (b) To be convinced beyond doubt that the Appellant was responsible for the creation of invoices, payment vouchers and cheques that was alleged to be encashed and laundered by her; and
 - (c) To accept beyond doubt that the 'circumstantial evidence' relied on by the State to prove connection of the invoices, payment vouchers and cheques and such 'circumstantial evidence' was reliable and not speculative; and
 - (d) To properly evaluate the evidence of the meeting of the Appellant and Navin Sen (PW2) on the 13th of May 2007 and fairly analyse the evidence presented by the Appellant and her reasons why she refused to accept the evidence of PW2.
- 5.11 THAT the Court failed to properly canvass and evaluate the evidence of the Appellant at trial and to discount her evidence with reason if it so chooses not to believe such evidence but such failure to provide reasons why the Appellant's evidence is not accepted renders the judgment demonstrably perverse and/or unsafe or unsatisfactory.
- 5.12 THAT in all the circumstances, the sentence imposed upon the Appellant was manifestly excessive."

[4] As can be seen, some of the grounds are not articulated using simple English so that the error alleged is easy to comprehend. The grounds of appeal against conviction can be

summarized into one issue, that is, whether the trial judge gave cogent reasons for not accepting the unanimous not guilty opinions of the assessors to sustain the convictions on appeal. The issue is one that requires consideration of the law and facts, and therefore, leave is required. The test for leave is whether the ground is arguable before the Full Court.

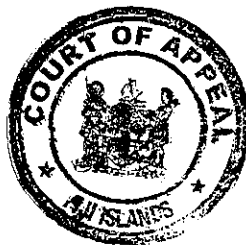
- [5] The trial judge gave detailed reasons for convicting the appellant. Whether those reasons are cogent on the evidence led at trial is matter for the Full Court. The appellant relied on similar grounds when she applied her bail pending appeal. On 16 October 2012, my brother judge Chandra JA refused bail. But in that bail ruling, Chandra JA reached the following conclusion at paragraph 30:


“Having considered the submissions made before me, I am of the view that though the appeal of the Appellant is highly arguable, it does not meet the threshold of being one where there is a very high likelihood of success.”

- [6] Unfortunately, Chandra JA did not make any order granting leave to the appellant to appeal against her conviction and sentence. I am satisfied that the appellant has satisfied the test for leave to appeal her conviction and sentence.
- [7] The sentence appears to be on the higher side of tariff and it is a matter for the Full Court to consider whether the total effective sentence is manifestly excessive in all circumstances of this case.

Result

- [8] Leave to appeal against conviction and sentence is granted.




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Hon. Justice D. Goundar
JUSTICE OF APPEAL